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APR 12 2006

OFFICE OF PETITIONS

In re Application of :
Andrew Frank :
Application No. 09/551,299 :
Filed: April 18, 2000 :
Attorney Docket No. 977.039US1 :

ON PETITION

This is a decision on the petition filed August 24, 2005, under 37 CFR 1.181, to withdraw the holding of abandonment, or, in the alternative, under 37 CFR 1.137 (b), to revive the above-identified application

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED** as moot.

The above-identified application was held abandoned for failure to reply in a timely manner to the non-final Office action of October 3, 2003. A Notice of Abandonment was mailed on September 8, 2004.

Petitioner asserts that counsel never received the Office action of October 3, 2003 since it was mailed to a different address. In support, the petition is accompanied by a copy of applicant's return postcard, date-stamped "June 14, 2002" by the USPTO, indicating receipt in the USPTO on that day. The petition also encloses copies of transmittal of the Revocation and Power of Attorney with the Change of Correspondence Address.

A review of the written record indicates an irregularity in the mailing of the Office action of October 3, 2003. In this regard, the Office received a change of address on June 14, 2002, prior to the mailing of the Office action of October 3, 2003. Office records were not updated to reflect this new change of correspondence address. Accordingly, as the Office action was mailed to an incorrect address, the Notice of Abandonment mailed September 8, 2004 is hereby vacated and the holding of abandonment withdrawn.

The petition and extension of time fees will be refunded to petitioner's deposit account as authorized.

This application is being forwarded to Technology Center AU 2111 for appropriate action in the normal course of business on the reply to the non-final Office action of October 3, 2003, which was received with the filing of this petition on August 24, 2005.



Frances Hicks

Petitions Examiner
Office of Petitions